

12.07.11 Transcript re Proceeding before Judge Feinerman

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF ILLINOIS  
3                   EASTERN DIVISION  
4                   STEPHANIE HAWKINS, DARSEMIA                   )  
5                   JACKSON, and MERIJA WALLACE,                   )  
6                   individually and on behalf                   )  
7                   of all other similarly                   )  
8                   situated,                   )  
9                   Plaintiffs,                   ) Case No. 09 C 3633  
10                   -vs-                   ) Chicago, Illinois  
11                   SECURITAS SECURITY SERVICES,                   ) December 7, 2011  
12                   USA, INC.,                   ) 9:00 a.m.  
13                   Defendant.                   )

14                   TRANSCRIPT OF PROCEEDINGS  
15                   BEFORE THE HONORABLE GARY FEINERMAN

16                   APPEARANCES:

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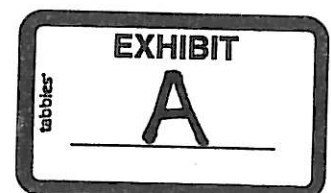
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1                   APPEARANCES: (Continued)

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3                   Page 1



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BY: MR. JOHN T. ROACHE

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1 (Proceedings heard in open court:)

2 THE CLERK: 09 C 3633, Hawkins versus Securitas  
3 Security Services.

4 MR. VAN TINE: Good morning, your Honor. Matthew  
5 Van Tine for the plaintiffs.

6 MR. ZOURAS: Jim Zouras, your Honor, good morning,

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7 for the plaintiffs.

8 MR. ROACHE: Good morning, your Honor. John Roache  
9 on behalf of the defendant.

10 THE COURT: Good morning. So, we have a renewed  
11 motion for class certification on the uniform maintenance  
12 claim. And it's for a narrow class of the folks who don't  
13 have -- who didn't wear wash-and-wear uniforms.

14 My question -- I have two questions. One has to do  
15 with ascertainability, and the other one has to do with the  
16 individual issue regarding the lunch offset.

17 First, how -- is this class or narrow class  
18 ascertainable, readily ascertainable based upon records that  
19 can easily be consulted where you can put people in one  
20 category, the hard-look category or the wash-and-wear  
21 category?

22 MR. ZOURAS: Yes, your Honor, it is ascertainable.  
23 One thing we do know is that the defendant does maintain  
24 records on the types of uniforms they issue to their  
25 employees. They have specific categories, hard-look,

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1 soft-look, and other. Ascertainability is a very easy issue.

2 THE COURT: And what -- and I'll give you a chance to  
3 address this in a second.

4 What about the -- that was one of the two grounds for  
5 denying class certification of the broader class. What about  
6 the second ground, which is the lunch offset, even for -- I  
7 guess I didn't address the narrowed class because it wasn't  
8 proposed, but the lunch offset would apply with equal force to  
9 the narrowed class. What do you have to say about that?

10 MR. ZOURAS: Well, we have a couple of things, your  
11 Honor. First of all, there are no records indicating when

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12 people took lunches, if ever. The testimony, the evidence is  
13 that these people couldn't take a lunch break in any event  
14 because they were required to be on duty at all times.

15 So, at least for the majority, the overwhelming  
16 majority of the employees, they eat their lunch while on duty  
17 at their post at their sites. So, we do not see that as a  
18 valid, even arguable offset possibility.

19 We believe that in order to have an offset, in any  
20 event, they have to come forward with their records showing  
21 that they're entitled to an offset because these folks did, in  
22 fact, take a break. They don't have those records.

23 MR. VAN TINE: The legal standard for a lunch --  
24 well, for whether a lunch needs to be compensated or not is  
25 whether there are 20 or 30 minutes of uninterrupted time that

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1 the employee is free to do what he does -- what he wants to  
2 do. These guards are overwhelmingly on call, required, as  
3 Mr. Zouras said, to be at their post, and do not get an  
4 uninterrupted 20- or whether the standard is 30-minute break  
5 that they could just go to Walgreen's and run an errand, for  
6 example.

7 THE COURT: Well, didn't -- let me -- you have a  
8 factual issue and then a legal issue. On the factual issue,  
9 which is your suggestion that all the Securitas security  
10 officers were required to stay at their desk, weren't there  
11 certain individuals who were deposed who testified that they  
12 were able to go to a lunchroom or able to eat lunch in their  
13 truck or their car?

14 MR. ZOURAS: There was a minority of guards who  
15 testified to that effect, your Honor. We are not saying and

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16 we don't believe that we are required to prove that every  
17 single individual did not have the opportunity to have a lunch  
18 break or did have a lunch break. What we are saying is that  
19 the majority of folks were not given a 20- to 30-minute  
20 uninterrupted break.

21 THE COURT: See, I think that's something that the  
22 defendant would argue in saying that, "well, majority, it's  
23 not uniform," no pun intended, "and, therefore, it presents an  
24 individual issue that's not susceptible to class resolution."

25 And if you were to argue that, what would your

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1 response be?

2 MR. ZOURAS: Well, our response would be that we  
3 can't decide these cases based on the experiences of a few.  
4 It has to be based on the experiences of the majority. And  
5 when we say the majority, we're not saying 51 percent or  
6 60 percent. We're really looking at 90 percent.

7 There's always exceptions in cases involving hundreds  
8 or thousands of people where specific individuals at specific  
9 posts, for whatever reason, are entitled to go to the  
10 cafeteria and so forth. That certainly is subject for  
11 cross-examination at trial, and based on representative  
12 testimony, they are free to do that. They are free to say  
13 that, "Look, there's a certain percentage that wouldn't be  
14 entitled to any recovery in their view because of these  
15 offsets."

16 THE COURT: But that would be after the class was  
17 certified.

18 MR. ZOURAS: Yes, your Honor.

19 THE COURT: You've got to -- and I agree with you  
20 that if it's a situation where there are a thousand class

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21 members or potential class members and there's a few outliers  
22 here and there, that's not going to destroy the class. But what  
23 basis do you have for saying that this -- the lunch break not  
24 at the desk people are an extremely insignificant minority as  
25 opposed to a non-trivial minority of the potential class?

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1 MR. ZOURAS: Well, unfortunately, we're using a lot  
2 of vague concepts in terms of trivial and insignificant  
3 majority. All we can do is express to your Honor what the  
4 evidence shows, that, yes, we have seen a couple of people  
5 deposed here and there who said that they were able to walk  
6 away from their post and have a break; but it simply does not  
7 reflect the experiences of at least 90 percent of the people  
8 we have -- we have testimony from.

9 MR. VAN TINE: And, in fact, Securitas did require  
10 the employees to sign a lunch waiver to acknowledge that they  
11 would not be able to take an uninterrupted lunch where they  
12 were free.

13 THE COURT: Right. And I know you also have this  
14 issue with the one hour. There's something about a one-hour  
15 agreement?

16 MR. VAN TINE: No, there's -- with respect to the  
17 amount of time the Department of Labor had established in I  
18 believe they refer to it as an enforcement guideline or  
19 something similar --

20 THE COURT: This wasn't a Securitas policy; this was  
21 a Department of Labor --

22 MR. VAN TINE: No, but Securitas, in one of the  
23 Securitas handbooks, they cited that policy and recognized  
24 that if guards were required to maintain their own uniforms,

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25 they should be compensated for an hour of work per week.

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1 THE COURT: All right. But you don't have a wage  
2 Payment and Collection Act claim --

3 MR. VAN TINE: Excuse me?

4 THE COURT: You're not arguing that this was -- you  
5 don't have a claim in your case that this was a contractual  
6 obligation, and you're not bringing a claim under the wage  
7 Payment and Collection Act?

8 MR. VAN TINE: That's correct, your Honor. We are  
9 not.

10 THE COURT: Okay. What do you have to say -- let me  
11 ask the defendant what it has to say about this notion that  
12 the -- well, if you want to talk about ascertainability,  
13 that's fine. But I'm interested as well and primarily in the  
14 notion that, yeah, there may have been a few officers here and  
15 there who were able to take their lunch break in the lunchroom  
16 or in their cars, but it's really a trivial minority, doesn't  
17 rise to the level -- to the critical mass that would make  
18 class resolution inappropriate.

19 MR. ROACHE: Sure. Your Honor, and if I could, just  
20 on the ascertainability, I guess what I'd say on that is based  
21 on the testimony -- and we have testimony from individuals who  
22 wore all types of uniforms, and what became clear is there  
23 were varying methods for how they all maintained their  
24 uniforms. Some ironed them. Some didn't. Some washed them  
25 with other clothes, and that's all they did with it.

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1 Others testified they didn't do anything. Their  
2 spouse took care of their uniforms. So, they obviously

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3 wouldn't have a wage and hour claim if someone else is taking  
4 care of --

5 THE COURT: Let me stop you for one second. Let's  
6 say a spouse took care of the washing. Do you have a claim on  
7 behalf of the spouse?

8 MR. VAN TINE: I do not think so, your Honor.

9 THE COURT: Okay. Go ahead.

10 MR. ROACHE: And so, your Honor, we had testimony  
11 from a lot of people who said their spouse was the one who  
12 maintained their uniforms; and as I said, a lot said they just  
13 washed it with other clothes, regardless of which type of  
14 uniform it was.

15 As for the meal periods, I think that varied from  
16 individual to individual and actually day to day for  
17 individuals. We had some individuals who said they were able  
18 to take uninterrupted lunch breaks on three out of the five  
19 days of the week, or on two out of the five days a week. We  
20 had others who said they were relieved virtually every day.

21 And I think it varied from person to person as to  
22 whether or not they were able to take this 20- to 30-minute  
23 meal break, and that's why this individual issue, I think,  
24 makes it impossible to certify a class on these issues.

25 THE COURT: Your first argument is, well, there's

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1 some -- even people who had a soft-look and a hard-look  
2 uniform, they varied in the amount of time that they spent  
3 maintaining their uniforms, some not at all and some a lot.  
4 Isn't that a damages issue rather than a liability issue?

5 MR. ROACHE: I don't think so, your Honor, because if  
6 it was a wash-and-wear uniform and all they did was throw it



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7 in with other clothes, I don't think they have -- they don't  
8 have any compensable time under the act.

9 THE COURT: Right. But we're going to carve out all  
10 the wash-and-wear people. We're just going to have hard-look  
11 and soft-look people -- according to the plaintiffs, we're  
12 just going to have hard-look and soft-look people in this  
13 class, so we don't have to worry about wash-and-wear.

14 MR. ROACHE: But how are they determining that  
15 hard-look and soft-look are not wash-and-wear? A lot of  
16 people who had the soft-look and the hard-look said that they  
17 would just wash and wear their uniforms and that's how they'd  
18 maintain it.

19 THE COURT: So, you're saying that -- and I'm glad  
20 you raised this because I wasn't catching on to this. You're  
21 saying that just because somebody -- somebody being hard-look  
22 or soft-look is not incompatible with the person being  
23 wash-and-wear?

24 MR. ROACHE: For example, I believe both Munoz and  
25 Alberti, and I don't know if it was hard-look or soft-look,

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1 but wore one of those types of uniforms; and the way they said  
2 they maintained it, Munoz said for the first few months he  
3 worked, he took it to the dry-cleaners. After that, he'd wash  
4 it. He never ironed it after that. So, it was, in effect,  
5 wash-and-wear, that he'd wash it with his other clothes.

6 THE COURT: So, you're actually making a case against  
7 ascertainability. You're saying that just because a record  
8 shows that somebody is hard-look or soft-look doesn't mean  
9 that they are not wash-and-wear?

10 MR. ROACHE: That's correct, your Honor.

11 THE COURT: And that that still would have to be  
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12 resolved on an individualized basis?

13 MR. ROACHE: That's correct.

14 THE COURT: Okay. I may have to get further briefing  
15 on this, but let me -- I want to give you guys the last word  
16 at this point.

17 MR. ZOURAS: Well, our comment on the hard-look,  
18 soft-look, your Honor, is that at least with those uniforms,  
19 it removes any issue over whether or not it was required by  
20 Securitas because that is one of the main points of contention  
21 here.

22 Now, the rule is suffered or permitted, it's not  
23 required; but certainly when it comes to actual or  
24 constructive knowledge, whether or not they required something  
25 is relevant.

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1 And with respect to the hard and soft uniforms,  
2 there is no dispute that they required special maintenance.  
3 What they're saying is that despite the uniform standardized  
4 requirement, some folks may not have done it or had their  
5 wives do it or had the dry-cleaners do it. We believe those  
6 are all damages issues.

7 But at least in terms of that more narrowly defined  
8 class, there can be no dispute as to the defendant's  
9 knowledge, expectations, whether or not they suffered and  
10 permitted that type of work.

11 MR. ROACHE: And I would disagree with that, your  
12 Honor. I don't think there was any requirement that these  
13 individuals press their uniforms.

14 THE COURT: Okay. I'm sorry to draw this out longer,  
15 but I'm going to -- I think I would -- I don't think I can

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16 make an intelligent decision on this without hearing from the  
17 defendants in response to this renewed motion. So, how long  
18 would you like?

19 MR. ROACHE: Three weeks, your Honor.

20 THE COURT: That's fine.

21 THE CLERK: December 28th.

22 THE COURT: And then how long would you like to  
23 reply?

24 MR. ZOURAS: Can we have two weeks, your Honor?

25 THE COURT: Sure.

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1 THE CLERK: January 11th.

2 MR. ZOURAS: Can we go to January 13?

3 THE COURT: Yes. And do we have a status coming up?

4 MR. ZOURAS: On December 15, your Honor.

5 THE COURT: Okay. Why don't we move that to  
6 January -- the week of January 20th, Jackie. Do we have  
7 something available?

8 THE CLERK: We'll set you for January 19th, 9:00 a.m.

9 THE COURT: All right. And I'll have a ruling on  
10 this, and then we'll get -- we'll get going with class notice  
11 for either the training claim or the training plus uniform  
12 maintenance claim.

13 MR. ROACHE: Okay. Thank you, your Honor.

14 MR. VAN TINE: Thank you, your Honor.

15 MR. ZOURAS: Thank you, your Honor.

16 (Which were all the proceedings heard.)

17 CERTIFICATE

18 I certify that the foregoing is a correct transcript from  
19 the record of proceedings in the above-entitled matter.

20

22 Charles R. Zandi Date  
23 Official Court Reporter

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25